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10/626,383	07/24/2003	James L. Kroening	P1905US00	9803
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GATEWAY, INC.			PATEL, KAUSHIKKUMAR M	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,383	<b>Applicant(s)</b> KROENING, JAMES L.
	<b>Examiner</b> KAUSHIKKUMAR PATEL	<b>Art Unit</b> 2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 December 2007.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8,10-19 and 21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8,10-19 and 21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 July 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This Office Action is in response to the Applicant's communication filed on December 03, 2007 in response to PTO Office Action mailed August 14, 2007. The Applicant's remarks and amendments to the claims and/or the specification were considered with the results that follow.
2. In response to the last Office Action, claims 1, 3-4, 6-7, 13, 17 and 21 have been amended. No claims have been added. Claims 9 and 20 have been canceled. As a result, claims 1-8, 10-19 and 21 remain pending in this application.

***Allowable Subject Matter***

3. The indicated allowability of claims 9 and 20 is withdrawn in view of the careful review of the reference (Maffezzoni, US 6,901,493) and claim interpretation. Rejections based on the newly cited reference(s) follow. The examiner deeply regrets any inconvenience this may have caused to the applicant.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was

not described in the originally filed specification and as such considered as new matter. Claim 1 recites limitation "copying contents from a second storage device to the protected area of the first storage device" in lines 3-4. However, the originally filed disclosure does not provide how the contents from a second device are directly copied to the protected area of the first device, without copying it to the user area of the first storage device. Applicant is advised to delete the new matter or provide a proper support in the originally filed disclosure.

Claims 5-6 are rejected due to their dependency on rejected claim.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 13-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "determining ... a protected area, in response to ... creating protected area on the storage device, booting to the protected area and copying contents of protected area to user area" in lines 5-9. Here it is noted that claim recites checking whether the storage device includes protected area and if protected area is not present than the protected area is created on the storage device. However, it not clear how to boot in the just created protected area and also since the protected area is newly created then how the contents of protected area is copied to user area, since there are no data in newly created protected area.

Claim 21 also contains similar ambiguities as claim 13.

Claim 17 recites limitation "wherein read utility is to copy content of protected area of a storage device to user area" in lines 7-8, and further recites "create utility to create the protected area on the storage device" in lines 11-12. Here, it is not clear, how read utility copies the content of the protected area, if there is no protected area in the storage device (i.e. based on limitations "create utility to create protected area", lines 11 and 12), or if there is a protected area present than it is not clear why create utility creates the same protected area again?

Claim 17 recites the limitations "the directory" and "the storage device" in lines 4, 5 and 8-9 respectively. There is insufficient antecedent basis for the limitations in the claims.

Claims 14-16 and 18-19 are also rejected due to their dependency on rejected claims.

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6, 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maffezzoni (US 6,901,493) and Ding (US 6,430,663) (incorporated reference by Maffezzoni, col. 6, lines 15-16).

Note: due to ambiguities set forth with respect claims 1, 13, 17 and 21 above, the rejection is applied according to reasonable interpretation of the claims and conflicting limitations are not treated on merits.

As per claim 1, Maffezzoni teaches a method of creating a backup copy of data comprising:

creating a protected area on a first storage device (Maffezzoni, fig. 3, item 104a);  
copying contents from a second storage device to the protected area of the first storage device (Maffezzoni, col. 5, lines 58-60, "the location to which selected data was copied is accessed and the selected data is restored back to the appropriate location on the hard drive");

copying contents of a first area of a first storage device to a second area of the first storage device (Maffezzoni, col. 4, lines 43-50, col. 8, lines 15-16). Maffezzoni teaches backing up data from one partition (user) of hard disk to another partition (hidden or protected area) of hard disk but fails to teach copying content of protected area to user area, however it is readily apparent to one of ordinary skill in the art at the time of the invention that originally the Operating System and data are stored in first area (partition) of the disk and the backup copy is made to second partition of the disk, such that in case of logical crash of one of the partition, the system remains operational from the other partition of the disk (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40). Thus, it would have been obvious to one having ordinary skill in the art to make a backup copy of protected area of disk to user area of disk (i.e. make two copies as taught by Maffezzoni) to keep the system operational from the same hard drive in

case of logical crash of the one of the partition (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40).

Maffezzoni further teaches saving user area to a second storage device (Maffezzoni, col. 8, lines 15-18). Maffezzoni fails to teach copying both protected area and user area to another disk, but he teaches that if there is a physical crash of the hard disk then data can not be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device so that data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

As per claim 2, Maffezzoni teaches the backup program performing copying function (Maffezzoni, col. 4, lines 51-54). Maffezzoni fails to teach downloading the utility as required by the claim, but downloading utility software via a network or internet is known in the art and Examiner takes official notice of the fact, because keeping software centrally at one place and then distributing or downloading to client computers makes upgrading and maintenance of the software more efficient and reliable.

As per claims 3 and 4, Maffezzoni teaches that the user area of the storage devices are saved to the second storage devices directly connected to electronic device or indirectly connected, e.g. attached to the backup server (Maffezzoni, col. 5, lines 11-35).

As per claim 5, Maffezzoni teaches booting to protected area (Maffezzoni, col. 5, lines 48-50).

As per claim 6, Maffezzoni teaches rebooting to user area after the copying and before the saving (Maffezzoni, col. 8, lines 6-9).

As per claim 17, Maffezzoni teaches a backup server comprising:  
a backup storage device (col. 5, lines 20-35);  
a read utility to be downloaded to and executed at an electronic device (col. 4, lines 51-54, it is inherent to have an electronic device (computer) to accommodate the hard disk);

a controller to download the directory from the backup storage device to the user area of the storage device (here Maffezzoni teaches restoring data from backup storage to hard drive of the computer system, col. 5, lines 20-35, teaches backup storage device and col. 5, lines 58-60 teaches restoring the directory from backup device to appropriate partition of the hard disk, where it is apparent that storage devices includes controller);

a create utility to be downloaded and executed at the electronic device (col. 6, lines 3-30, teaches defining hidden partition on the disk, where it is inherent to have utility to define hidden partition).

Maffezzoni copying contents of a first area of a first storage device to a second area of the first storage device (Maffezzoni, col. 4, lines 43-50, col. 8, lines 15-16). Maffezzoni teaches backing up data from one partition (user) of hard disk to another partition (hidden or protected area) of hard disk but fails to teach copying content of protected area to user area, however it is readily apparent to one of ordinary skill in the art at the time of the invention that originally the Operating System and data are stored in first area (partition) of the disk and the backup copy is made to second partition of the

disk, such that in case of logical crash of one of the partition, the system remains operational from the other partition of the disk (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40). Thus, it would have been obvious to one having ordinary skill in the art to make a backup copy of protected area of disk to user area of disk (i.e. make two copies as taught by Maffezzoni) to keep the system operational from the same hard drive in case of logical crash of the one of the partition (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40).

Maffezzoni further teaches saving user area to a second storage device (Maffezzoni, col. 8, lines 15-18). Maffezzoni fails to teach copying both protected area and user area to another disk, but he teaches that if there is a physical crash of the hard disk then data can not be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device so that data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

Claim 21 is rejected under same rationale as applied to combination of claims 1 and 2 above.

Claim 18 and 19 are rejected under same rationale as per claims 4-6 above.

10. Claims 7-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (APA herein after), Kawano et al. (US 2003/0229768) (Kawano herein after) and further in view of Maffezzoni (US 6,901,493).

As per claim 7, APA teaches saved contents can be restored to the electronic device (e.g. data can be restored from back up storage (first storage) to the storage connected to the device (second storage) (page 2, lines 27-28) and also as per APA operating system is unable to access the HPA, it inherently teaches restoring the data in user space of the second (attached to device) storage).

APA fails to teach copying protected area directory (data) from the user space of second storage to protected area of the second storage. Kawano teaches the data in the user area is copied to protected area (paragraph [0039]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the restoring method of APA by the teachings of Kawano so that the data can be protected from viruses and system can be recovered without using removable disks or storage devices (Kawano, paragraph [0008]).

APA and Kawano fail to teach creating protected area before copying the contents. Maffezzoni teaches creating protected area before copying (Maffezzoni, fig. 3, item 104a). It would have been obvious to one having ordinary skill in the art at the time of the invention to create protected area on the hard disk as taught by Maffezzoni in the system of APA and Kawano to backup data into hidden (protected) partition to avoid accidental deletion of important data (Maffezzoni, col. 6, lines 10-12) and to restore data in case of logical crash of hard disk partition (Maffezzoni, col. 5, lines 40-41).

As per claim 8, APA inherently teaches saving of data from second (attached to the electronic device) storage to the first storage (attached to the back up server) before restoring. Because one having ordinary skill in the art at the time of invention would

knew that data can be restored from back up storage device if data was backed up from second storage to first storage (back up storage) initially.

As per claim 10, Kawano teaches booting to protected area and administering user data (par. [0033]).

As per claim 11, Kawano teaches rebooting to user area after user data is restored from PARTIES partition (par. [0043]).

As per claim 12, Kawano teaches storing software modules on different storage devices or on network system (par. [0030]). It would have been obvious to one having ordinary skill in the art at the time of the invention to downloaded software from different storage device (network) to be executed by computer system to achieve the functionality of Kawano.

11. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al. (US 2003/0229768) (Kawano herein after) and Maffezzoni (US 6,901,493).

As per claim 13, Kawano teaches an electronic device (fig. 1, par. [0031], taught as computer system) comprising:

a processor (inherent in computer system); a storage device (fig. 1, item 11), wherein the storage device comprises instructions, which when executed on the processor (par. [0029] and [0030]) comprise:

booting to the protected area and copying contents of the protected area to a user area of the storage device (par. [0042], taught as BIOS boots the special operating

system from PARTIES partition and par. [0016], user data is passed between partitions).

Kawano fails to teach, determining whether the storage device includes a protected area and saving user area to a backup storage device. Maffezzoni teaches copying data to multiple areas (partitions) of the hard disk such that if one of the multiple partitions is damaged, the system remains operational from other partition of the same hard disk and Maffezzoni also teaches backing up data to another storage device, because in case of physical damage to entire disk, data is restored from second storage device (Maffezzoni, col. 3, lines 13-22, col. 8, lines 12-27). It would have been obvious to one having ordinary skill in the art at the time of invention to back up the user/protected area data to second storage device as taught by Maffezzoni in the system of Kawano, because data can be retrieved in case of physical damage to the first storage device (Maffezzoni, col. 8, lines 12-27).

It is well known that some storage device contains a protected area (present application specification page 2, lines 30-31). It would have been obvious to one having ordinary skill in the art at the time of the invention would have implemented a process to check whether the storage device includes a protected area before trying to boot from PARTIES partition because all storage devices do not include protected area (present application specification, page 2, lines 30-31, checking whether a protected area is present on a storage device is known in the art).

Maffezzoni teaches creating hidden partition on the disk (Maffezzoni, fig. 3, item 104a). Also it is readily apparent from background of invention of present application,

that all disks do not have protected area, as such one having ordinary skill in the art at the time of the invention would have been motivated to check if hard disk contains the protected area and if not then creating protected area as taught by Maffezzoni to backup data in the protected area and in case of logical crash the data is easily restored from the protected area (Maffezzoni, col. 5, lines 40-43).

As per claim 14, Kawano teaches rebooting to user area after user data is restored from PARTIES partition (par. [0043]).

As per claim 15, Maffezzoni teaches backup storage device (Maffezzoni, col. 5, lines 11-35).

As per claim 16, Kawano teaches storing software modules on different storage devices or on network system (par. [0030]). It would have been obvious to one having ordinary skill in the art at the time of the invention to downloaded software from different storage device (network) to be executed by computer system to achieve the functionality of Kawano.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR PATEL whose telephone number is (571)272-5536. The examiner can normally be reached on 7.30 am - 4.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KAUSHIKKUMAR PATEL  
Examiner  
Art Unit 2188

/kmp/  
February 27, 2008

/Hyung S SOUGH/  
Supervisory Patent Examiner, Art Unit 2188